

BOARD OF APPEALS CASE NO. 5020

*

BEFORE THE

APPLICANTS: Dennis & Nancy Reimann

*

ZONING HEARING EXAMINER

**REQUEST: Variance to transfer a develop-
ment right to a parcel located 2,250 feet from
the parcel with the development right;
1531 Boggs Road, Forest Hill**

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 2/23/00 & 3/1/00

HEARING DATE: March 29, 2000

*

Record: 2/25/00 & 3/3/00

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, Dennis W. and Nancy M. Reimann, are requesting a variance from Section 267-34(D)(4) of the Harford County Code, which provides that development rights may be transferred from one parcel to another only if the parcels are contiguous or within 500 feet of each other. The Applicants seek approval for the transfer of two development rights, which currently are assigned to their daughter's property, to the Reimann property, located approximately 2,250 feet away.

The "receiving" property, owned by the Applicants, is located at 1531 Boggs Road, Forest Hill. The parcel is more specifically identified as Parcel 373, in Grid 3A on Tax Map 40. This property contains approximately 23.5 acres, all of which is zoned AG Agricultural. The "sending" property, owned by John C. and Kristina L. Morris, is located at 2037 High Point Road, Forest Hill. That parcel is more specifically identified as Parcel 409, in Grid 2A, on Tax Map 40. The Morris property contains approximately 13 acres, all of which is zoned AG. Both properties are located in the Third Election District. The Reimann and Morris properties are not contiguous; instead, they are separated by one parcel of land, a 115 acre farm owned by Ms. Clara Gorrell. Ms. Gorrell's farm has been placed in the Maryland Agricultural Land Preservation Program, which prohibits the transfer of development rights, whether pre-existing or acquired, from the farm.

Case No. 5020 - Dennis & Nancy Reimann

Mr. Robert F. Kahoe, Jr., People's Counsel, had entered the case originally, based upon potential issues involving the transfer of development rights and the impact on the Agricultural Land Preservation program. However, upon receipt of notice that the Maryland Agricultural Land Preservation Foundation would not formally oppose the request for the variance and Ms. Gorrell also did not oppose the request, Mr. Kahoe withdrew his appearance in this matter.

Mr. Dennis Reimann appeared and testified that he and his wife, Nancy Reimann, have owned the proposed "receiving" property since 1981. The Reimann property is located on the south side of Boggs Road, east of High Point Road. When the 63 acre farm containing 10 development rights just north of Boggs Road was proposed for a subdivision, Mr. Reimann sought to limit the development of the subdivision and thus became involved in a joint venture with the owner upon agreement that they would develop only six lots. They designed the subdivision so that the lots located towards the back portion of the subdivision contained large parcels of approximately 13 to 15 acres in size. This subdivision became known as "Erin's Run", and the sending property is designated as Lot 5 of the Erin's Run subdivision. When the subdivision plan was finalized, Mr. Reimann and his joint venture partner decided to split the remaining four development rights and assign them with two development rights going to Lot 5 and two to Lot 6.

Mr. Reimann testified that his daughter and son-in-law currently own the subject "sending" property, namely Lot 5 in Erin's Run. The two extra development rights from the original farm remain assigned to that property. Now that his daughter desires to sell the property, Mr. Reimann would like to transfer the two additional development rights from Lot 5 to his property, located one large farm away from his daughter's parcel. According to Mr. Reimann, under normal circumstances, the provisions of the Harford County Code would allow his daughter to transfer the development rights to the Gorrell farm and then Gorrell could have assigned them to his property, accomplishing the proposed transfer with no need for a variance. However, because the Gorrell farm is in the agricultural preservation program, Gorrell is prohibited from transferring those development rights to any other property.

Case No. 5020 - Dennis & Nancy Reimann

Upon consultation with the Department of Planning and Zoning, Ms. Gorrell, the Maryland Agricultural Land Preservation Foundation, and the county's agricultural land preservation representative, Mr. Reimann indicated that he was told that approval of the requested variance was the only way to accomplish the proposed transfer.

It was Mr. Reimann's testimony that the two subject properties are unique insofar as this request is concerned because of their position in relationship to each other, with the Gorrell farm located in between the two parcels. While the farm owner in the middle is in favor of the transfer, the agreement placing that farm in the agricultural preservation program prevents all the parties involved from effectuating the desired transfer of the development rights. This "condition" of the farm's preservation creates a unique situation for the two subject properties. Mr. Reimann went on to testify that the transfer makes sense because the "sending" property is located in a more "rural" setting, with fewer properties having been developed around it. His property, the "receiving" parcel, is closer to an area of significant development. Thus, according to Mr. Reimann, it is more consistent with the Master Plan for his property to contain the two extra development rights than the sending property. Further, Mr. Reimann noted that none of his neighbors oppose this request and he does not believe there would be any negative impact to the surrounding properties if the proposed transfer is approved.

Ms. Kristina Morris, owner of the proposed "sending" property, appeared and testified that she supports the proposed request for the variance to allow the transfer of the two development rights from her property to the proposed "receiving" property owned by her father. She also indicated that she believed these properties were in a unique situation based upon the fact that, even though Ms. Gorrell is agreeable to allowing the transfer of the development rights through her farm, she cannot give permission to do so because of her participation in the AG Preservation Program. It is this unusual circumstance that led to the need for the requested variance to accomplish the desired transfer. In addition, both Ms. Morris and Mr. Reimann agreed to abide by the conditions set forth in the Staff Report filed by the Department of Planning and Zoning.

Case No. 5020 - Dennis & Nancy Reimann

The Department of Planning and Zoning, in its Staff Report, recommends approval of the requested variance with certain conditions. No witnesses appeared in opposition to the request.

CONCLUSION:

The Applicants are seeking approval of a variance to permit the transfer of two development rights between two parcels of land which do not meet the requirements of Section 267-34(D)(4) of the Harford County Code, which provides that parcels must be contiguous or within 500 feet of each other in order for such a transfer to occur. In this case, the subject properties are separated by a farm, approximately 2,250 feet across, which is prohibited from transferring development rights pursuant to a Deed of Easement sold by the farm owner to the Maryland Agricultural Land Preservation Foundation.

The uncontroverted evidence offered by the Applicants supports the contention that the situation regarding these two subject properties involves unique circumstances. It would appear that, under a typical scenario, development rights from the proposed sending property could be transferred to the proposed receiving property without a variance if the farm separating them was not a participant in the agricultural preservation program. While the farm owner is agreeable to the transfer, she is legally prohibited from allowing the development rights to “pass through” her property, unlike another farm owner who is not a participant in the preservation program. Literal enforcement of the Code thereby creates a practical difficulty due to the existence of the preservation easement.

While at first glance it might appear that approval of the variance would negatively impact the preserved farm located between the two properties, there was no evidence presented by any preservation program or agency to support this view. Further analysis indicates that, in fact, the two development rights do exist and they could be utilized to allow development on the proposed sending property regardless of the presence of the farm’s preservation easement. There would not appear to be any greater negative impact from use of the development rights on the proposed receiving property than from their use on the proposed sending property. Therefore, the evidence suggests that there would be no substantially detrimental effect to adjacent properties or material impairment of the purpose of the Code resulting from approval of the requested variance.

Case No. 5020 - Dennis & Nancy Reimann

It is the recommendation of the Hearing Examiner that the requested variance be approved, subject to the following conditions:

1. A "Statement of Development Rights for the Transfer of Development Right Program" form must be completed and submitted to the Department of Planning and Zoning;
2. A Deed of Assignment must be recorded;
3. The Final Plat for Erin's Run must be re-recorded to eliminate the note stating that Lot 5 contains two (2) additional development rights.

Date MAY 23, 2000

Valerie H. Twanmoh
Zoning Hearing Examiner